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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

August 2, 2004

In re application of : Robert M. Carmichael
Serial No. : 09/730,116
Filed : December 5, 2000
For : **ACTIVE CONTROL RELEASABLE BALLAST
SYSTEM FOR USE WITH DIVE EQUIPMENT**
Examiner : Ajay Vasudeva
Art Unit : 3617
Our File No. : 9297.6817

DECLARATION OF ROBERT M. CARMICHAEL

Robert M. Carmichael, the applicant in the above-identified patent application, declares as follows:

1. I am the applicant for the above-identified application.
2. I am co-owner of Halcyon Manufacturing, Inc.
3. Approximately in 1999, well before July 31, 2000, I conceived of an Active Control Ballast system ("system"), using a side release buckle for dropping weights from dive gear. The System corresponds to the invention claimed in the above-identified application. The System incorporates a side release buckle to prevent accidental weight loss, which was sometimes experienced through weight release systems incorporating hook and loop fastening assemblies (i.e. VELCRO).
4. A few months after my conception my claimed System was displayed in Halcyon's booth at the January 2000, DEMA trade show. See attached Affidavit of Joseph B. Stella dated January 18, 2001 (Exhibit A).
5. At the time of the signing of his Affidavit, Mr. Stella was the President/General Manager North America of Johnson Outdoors Inc. At present, Mr. Stella's job responsibilities with Johnson Outdoors have expanded to a higher level of responsibility.
6. Johnson Outdoors Inc. is the owner of U.S. Application No. 09/628,836 ("the '836 Application"), which is the application cited by the Examiner to allegedly show that my invention was made by a different inventive entity.

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7. It is clear from the Stella Affidavit that my claimed System invention was invented by me well before the July 31, 2000 filing date of the '836 Application.


8. Also at the time of the signing of the Stella Affidavit there was a dispute between my company and Johnson Outdoors regarding my allegations that Johnson Outdoors had violated a confidentiality agreement entered into between the parties. Our dispute was ultimately resolved and is not at issue. However, the fact that the factual statements made by Mr. Stella in his Affidavit were made while I was in a legal dispute with Johnson Outdoors provides further credibility and support for the fact that the invention claimed in claims 1-21 of the above-identified application were invented by me and not Johnson Outdoors or any other entity.

9. All critical dates regarding conception and actual reduction to practice for all embodiments of my claimed invention occurred prior to July 31, 2000.

10. Thus, I do not believe that the '836 Application is a proper citation against my unique invention and I respectfully ask that my application finally be allowed by the Patent Office.

I declare further that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful, false statements and the like are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of this application and any registration resulting therefrom.

Respectfully submitted,



ROBERT M. CARMICHAEL
Applicant

E:\0000\9297 Carleigh Rae\Amendments\6817(2nd-RC-Dec - O.A. 4-1-04).